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Petition of NSTAR Electric for Approval of)	
Revised Tariffs M.D.T.E. Nos. 100A, 101A,)	
200A, 201A, 300A and 301A Relating to the)	D.T.E. 05-84
Terms and Conditions for Distribution)	
Services and Competitive Suppliers)	
)	

(December 29, 2005)

TransCanada Power Marketing Ltd. (“TransCanada”) appreciates the opportunity to submit these Reply Comments in this proceeding that has the potential to substantially and adversely affect the future of retail choice of electricity supply in the Commonwealth of Massachusetts. TransCanada participated in the December 19, 2005 hearing and technical conference, has submitted initial comments in this docket and read those of others, and has considered further some key facts related to the issue of customer movement on and off Default Service. After doing so, TransCanada remains convinced that the changes proposed by the NSTAR Electric companies (“NSTAR”) to their terms and conditions are not warranted and would be a net harm to customers in the Commonwealth and contrary to Department policy and legislative mandate. For the reasons stated in its initial comments and in the additional comments provided below, TransCanada urges the Department to deny NSTAR’s petition to modify its terms and conditions as proposed.

II. Comments

1. There is no sufficient reason justifying NSTAR's proposed "quick-fix" prohibition of customer choice.

Based on NSTAR's petition and the December 19, 2005 hearing and technical conference at the Department, it is clear that NSTAR assumes there is an urgent problem that needs to be fixed now. TransCanada believes that assumption is wrong and not based on substantial evidence. This assumption that there is a need for a "quick-fix" seems to be driving NSTAR's conclusion to reject several of the good proposals that were offered at the hearing and in written comments.¹ Several reasons suggest that there is no need for a quick-fix.

First, there is no true urgency to NSTAR's request, since the primary cause of recent customer movement with respect to Default Service is an extreme price increase resulting from an extraordinary weather event. Specifically, there has been an unprecedented run-up in fossil fuel prices, in particular natural gas prices, which are widely understood to be the principal driver of electricity prices in New England. Attached to TransCanada's Reply Comments is an exhibit that depicts the NYMEX Natural Gas Prompt Month pricing from 1991- 2005. This exhibit shows the dramatic price increase that took place following serious damage to Gulf Coast oil and natural gas supply infrastructure caused by hurricane Katrina in late August, 2005. NSTAR had procured its last power supply for its large C&I customers prior to the dramatic price run-up and as a result this power was priced at a significant discount to the later prevailing market price. Price savvy customers and suppliers apparently saw the bargain, took advantage of

¹ These proposals sought to address the concern raised by NSTAR that some commercial and industrial ("C&I") customers might be paying a higher price for Default Service because of premiums for wholesale supply attributable to other customers moving on and off that service. The concern raised by NSTAR was that some customers are less able to move on and off Default Service and thus are subjected to the premium.

their customer choice option, and switched. This switching was smart customer choice under the existing rules. The important point, however, is that the switching that took place, and which is at the heart of NSTAR's request, was a response to an extraordinary event rather than a chronic condition. This extraordinary event should not be the basis for the Department turning back the clock on competitive retail supply and imposing the barrier to customer choice requested by NSTAR.

Second, NSTAR has failed to quantify or even show that there is significant harm being done to some C&I customers by allowing other customers to exercise retail choice. Without substantial evidence showing the magnitude of the alleged harm, NSTAR has failed to make the case that there is an urgent problem that needs to be fixed. This point was highlighted by participants at the hearing and technical conference, and by various written comments submitted in this proceeding, including the Comments of the Massachusetts Division of Energy Resources.² The point was also highlighted by *the absence of any NSTAR customers supporting NSTAR's proposed change* to its terms and conditions intended to protect them from perceived higher Default Service prices.³

Third, TransCanada notes that in the comments filed by Massachusetts Electric Company d/b/a National Grid ("NGRID"), that were intended to support the NSTAR petition, there is additional evidence to suggest that there is *no urgent problem* that needs to be fixed now. NGRID provides some switching statistics from its customer base as well as a description of a particular service option that NGRID allows. Regrettably, just as NSTAR did, NGRID also

² See, *Comments of the Massachusetts Division of Energy Resources*, pp. 3-4; see also, *Initial Comments of Retail Energy Supply Association*, p. 10.

³ Moreover, no NSTAR customers filed in support of the NSTAR proposal while two customer groups filed comments opposing it. See *Initial Comments of the Cape Light Compact* and the comments of The Energy Consortium filed in this docket.

denounces its customers' exercise of this legitimate option as "gaming".⁴ NGRID claims that in a nearly three year period, a grand total of 664 switches have occurred in which customers on its system have switched from a competitive supplier to Default Service and then back to the same supplier. NGRID provides this data as the basis for its support of NSTAR, as well as its own claim of "gaming" by customers and competitive suppliers. TransCanada believes that, if anything, NGRID's filing demonstrates the lack of merit of its and NSTAR's contention that any problem exists. The fact that only 664 switches took place among NGRID's approximately 147,000 C&I customers in Massachusetts over the last three years is an extremely low 0.450% of customers. If some customers switched on multiple occasions, the percentage of customers switching is even lower.⁵

Fourth, recent customer switching could also be related to a short-term factor in the Boston area wholesale markets that will go away once NSTAR takes appropriate action with respect to its transmission system. In a recent press release and subsequent news article in the Boston Globe, the Massachusetts Attorney General found fault with the behavior of a generator

⁴ The term "gaming" has been inappropriately used in the context of this proceeding and its subject matter. Participants, including NSTAR, at the December 19, 2005 D.T.E. hearing and technical conference acknowledged that customer switching is both completely legal, rational and expected under certain market conditions. The term, however, implies actions of impropriety and is too often used irresponsibly to portray legitimate conduct in a negative light.

⁵ NGRID's second contention of customer "gaming" is even more objectionable. It complains that "several customers" decided to switch back to its default service for the month of January, 2006 and were provided the three month fixed price rate of 14.113 ¢/kWh rate versus the January variable price rate of 17.010 ¢/kWh. NGRID claims this is more evidence of supplier and customer "gaming". TransCanada has had first-hand experience with NGRID's peculiar default service pricing strategy, in which NGRID allows customers to adopt the three month fixed rate even though the customer returns to default service for only a single, high cost month. In two instances in which TransCanada was familiar with all aspects of the customers' decision-making, the customers' contracts with TransCanada were expiring and TransCanada desired to renew the contracts. TransCanada was completely disadvantaged in its ability to compete with NGRID's rate, which as NGRID notes is cross-subsidized by its other customers. For NGRID to claim that this is somehow an example of supplier or customer "gaming" is unwarranted.

in the Boston area, as its pattern of bidding into the ISO New England markets supposedly resulted in a large value of daily Reliability Must Run (“RMR”) charges, which are subsequently paid for by Boston area retail load providers such as NSTAR and TransCanada.⁶ While we commend the Attorney General for bringing focus on this issue, we note that these RMR charges, which cannot be hedged by retail load providers, further incent customer switching. To the extent wholesale suppliers do not factor these RMR charges into their bids when they compete successfully for the NSTAR Default Service, customers are able to achieve greater savings by switching back to Default Service. These RMR charges should be greatly reduced, if not disappear, when NSTAR’s transmission upgrades are completed in the next six months and provide long-needed increased transmission import capacity into the Boston area. Again, the fact that a remedy is underway and will soon be completed mitigates any urgency associated with NSTAR’s proposal and argues against a quick-fix that will harm retail competition.

Fifth, to the extent there is any harm to some NSTAR customers in continuing to allow customers free choice in taking Default Service or contracting with a competitive supplier, that harm must be quantified and then weighed against the potential for harm to retail competition and customer choice generally. Only by doing so, will the Department be able to make a sound factual and policy decision on this issue. TransCanada submits that NSTAR has not given the Department a sufficient basis to make that decision and impose the quick-fix prohibition on customer choice.

⁶ See Peter J. Howe, *Loophole in Utility Rules Costs Customers*, Boston Globe, Dec. 20, 2005, at C1; Press Release, Massachusetts Attorney General Thomas Reilly’s Office, *AG Reilly Says “Gaming” of Energy Markets is Driving Up Retail Electricity Prices for Households, Small Businesses* (Dec. 19, 2005), available at <http://www.ago.state.ma.us/sp.cfm?pageid=873>.

2. If the Department concludes that there is a problem that should be fixed in the long-term, it should consider the proposals that have been offered by commenters in this proceeding.

To the extent that there is a perceived need to make changes in the rules regarding Default Service in the long-term, several useful suggestions were offered at the December 19, 2005 hearing and technical conference, and in the initial written comments, for addressing the concern that some C&I customers might have to pay some higher price for Default Service as a result of other customers exercising choice between retail competitive supply and Default Service. These suggestions included the following: (1) redesign the customer rate classifications so that smaller or less creditworthy customers are not lumped together with larger and more creditworthy customers; (2) take steps to move towards hourly or monthly pricing for Default Service;⁷ (3) conduct a fixed block procurement of wholesale power to supply Default Service customers, with any imbalance procured through the ISO New England spot markets; and (4) shorten the time between bidding periods for Default Service supply and when the service begins.

Each of these suggestions would be less harmful to retail choice and more consistent with Department policy and legislative intent regarding that choice. In one of its orders stemming from its investigation of Default Service in D.T.E. 02-40, the Department stated that “it remains essential that the Department take all appropriate steps to ensure that default service is compatible with the development of an efficient competitive market and to ensure that the benefits of a competitive market are available to all Massachusetts consumers.”

D.T.E.02-40, at 1. Additionally, Chapter 164, §1A(a) provides in part that: “[t]he department is hereby authorized and directed to require electric companies organized pursuant to the provisions

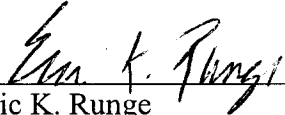
⁷ TransCanada notes that other jurisdictions have been able to adopt and implement basic service pricing that is closer to real-time pricing.

of this chapter *to accommodate retail access to generation services and choice of suppliers by retail customers*, unless otherwise provided by this chapter.” (Emphasis added.) Adopting one of the measures above, after a more generic proceeding on the issue of Default Service, rather than allowing prohibition of NSTAR’s customers’ choice would be far more consistent with these policy and legislative imperatives.

III. Conclusion

NSTAR has failed to justify a need for the prohibition of customer choice that it proposes. Other, less harmful measures have been suggested to the Department that, unlike NSTAR’s proposal, are consistent with Department policy and legislative mandate to support customer choice in retail electricity supply. For these reasons and the others provided in TransCanada’s Comments and Reply Comments in this proceeding, TransCanada urges the Commission to deny NSTAR’s petition.

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NYMEX Natural Gas Prompt Month since 1991

